No. 86-337

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

v.

OKLAHOMA TAX COMMISSION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

REPLY BRIEF FOR PETITIONER

Of Counsel:
EDMUND W. BURKE
JEFFREY D. LERNER
BURLINGTON NORTHERN
RAILROAD COMPANY
777 Main Street
Fort Worth, Texas 76102

BETTY JO CHRISTIAN
(Counsel of Record)
TIMOTHY M. WALSH
STEVEN REED
JERALD S. HOWE, JR.
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-8113
Attorneys for Petitioner

March 9, 1987

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
ARGUMENT	4
I. SECTION 306 PLAINLY AUTHORIZES FEDERAL COURTS TO REMEDY STATE TAX DISCRIMINATION RESULTING FROM RAILROAD PROPERTY OVERVALUATION	4
II. THE LEGISLATIVE HISTORY OF SECTION 306 CONTAINS NO EVIDENCE THAT CONGRESS INTENDED STATE TAX DISCRIMINATION RESULTING FROM OVERVALUATION TO BE RESERVED FOR STATE REVIEW ALONE	8
III. NEITHER THE CONSTITUTION NOR ANY PRINCIPLE OF FEDERALISM SUGGESTS THAT SECTION 306 SHOULD BE READ IN AN UNNATURALLY RESTRICTIVE MANNER	14
CONCLUSION	20
APPENDIX	1a

TABLE OF AUTHORITIES

Cases:	Page
Aloha Airlines, Inc. v. Director of Taxation, 464 U.S. 7 (1983)	15
Arizona Public Service Co. v. Snead, 441 U.S. 141 (1979)	15, 17
Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977)	17
Continental Oil Co. v. State Board of Equalization, 494 P.2d 645 (Okla. 1972)	7
Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983)	6
Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824)	15
Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963)	17
In re Assessment of Omaha, Lincoln & Beatrice Ry., 213 Neb. 71, 327 N.W.2d 108 (Neb. 1982)	18
In re Southern Ry., 313 N.C. 177, 328 S.E.2d 235 (N.C. 1985)	2
Moses Lake Homes, Inc. v. Grant County, 365 U.S. 744, *reh'g denied*, 366 U.S. 947 (1961)	16
Norfolk & Western Ry. v. Missouri State Tax Commission, 390 U.S. 317 (1968)	17
Railway Express Agency, Inc. v. Virginia, 347 U.S. 359 (1954)	17
Richmond, F. & P. R.R. v. State Corp. Commission, 219 Va. 301, 247 S.E.2d 408 (Va. 1978)	18
Scarborough v. United States, 431 U.S. 563 (1977)	15
Southern Ry. v. State Board of Equalization, 682 S.W.2d 196 (Tenn. 1984)	2, 18
Trailer Train Co. v. State Board of Equalization, 180 Cal. App. 3d 565, 225 Cal. Rptr. 717 (Cal. Ct. App. 1986)	18
United States v. Turkette, 452 U.S. 576 (1981)	15
Western Air Lines, Inc. v. Board of Equalization, 55 U.S.L.W. 4202 (U.S. Feb. 24, 1987)	3, 6, 8, 10
Statutes:	
Tax Injunction Act, 28 U.S.C. § 1341 (1982)	4, 18

TABLE OF AUTHORITIES—Continued

	Page
Okla. Stat. Ann. tit. 68, § 2467 (West Supp. 1987)	18
Okla. Stat. Ann. tit. 68, § 2468 (West 1966)	18
Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, §§ 210, 306, 90 Stat. 31, 46, 54 (1976) (§ 306 codified at 49 U.S.C. § 11503 (1982))	*passim*
Staggers Rail Act of 1980, Pub. L. No. 96-448, § 214, 94 Stat. 1895, 1913-15 (1980)	17
Legislative Materials:	
H.R. 10979, 94th Cong., 1st Sess. (1975)	1a
S. 2718, 94th Cong., 1st Sess. (1975)	1a
Transportation Act of 1972: Hearings on H.R. 11824, H.R. 11826, and H.R. 11207 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 92d Cong., 2d Sess. (1972)	12, 13
Surface Transportation Legislation: Hearings on S. 2362, S. 1092, S. 1914, S. 2635, S. 2841, S. 2842, and S. Con. Res. 56 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, 92d Cong., 1st Sess. (1971-72)	12, 13
Common and Contract Carrier State Property Tax Discrimination: Hearings on H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411, H.R. 16639, and S. 2289 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. (1970)	11
State Tax Discrimination Against Interstate Carrier Property: Hearings on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, 91st Cong., 1st Sess. (1969)	11
Tax Assessments on Common Carrier Property: Hearings on H.R. 4972 Before the House Comm. on Interstate and Foreign Commerce, 89th Cong., 2d Sess. (1966)	19

TABLE OF AUTHORITIES—Continued

	Page
Tax Assessments on Common Carrier Property: Hearings on H.R. 736, H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 2d Sess. (1964)	9
S. Conf. Rep. No. 595, 94th Cong., 2d Sess. (1976)	14
H.R. Rep. No. 725, 94th Cong., 1st Sess. (1975)	18, 19
S. Rep. No. 1085, 92d Cong., 2d Sess. (1972)	18
S. Rep. No. 630, 91st Cong., 1st Sess. (1969)	18
S. Rep. No. 1483, 90th Cong., 2d Sess. (1968)	8, 18
Special Study Group on Transportation Policies in the United States, Senate Comm. on Commerce, National Transportation Policy (the "Doyle Report"), S. Rep. No. 445, 87th Cong., 1st Sess. (1961)	9, 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-337

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

v.

OKLAHOMA TAX COMMISSION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF FOR PETITIONER

As petitioner Burlington Northern has demonstrated, section 306 of the 4-R Act unambiguously prohibits *all* forms of state tax discrimination against interstate rail carriers, including that resulting from overvaluation of railroad property.[1] Indeed, the terms of section 306 so clearly mandate this result that neither respondent has sought support for its position in the plain language of the statute.[2] Instead, respondents claim that Congress

[1] Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54 (codified at 49 U.S.C. § 11503) (1982)).

[2] Respondents are the Oklahoma Tax Commission ("Tax Commission"), the State Board of Equalization ("State Board"), and the respective members of those two agencies. The Tax Commission and the State Board, which filed separate responsive briefs on the merits, both eschew the "plain meaning" of § 306. *See* Tax Commission Brief at 18 ("plain meaning rule . . . is not enough in construction of § 11503"); State Board Brief at 8 ("no clear expression of intention is present").

implicitly excepted one highly effective form of tax discrimination from this otherwise comprehensive prohibition. Respondents contend that a federal court applying section 306 may not inquire into the true market value of a railroad's property to determine whether tax discrimination has occurred, or that it may do so only after a demanding threshold intent requirement has been met —a reading of the statute that would eviscerate the federal remedial scheme Congress adopted.

Significantly, neither respondent disputes that overvaluation of railroad property can yield discriminatory results every bit as serious as those caused by more overt forms of discrimination. As the facts of this case show, overvaluation can be a potent means of making railroad property bear a disproportionate tax burden. *See* Petitioner's Brief at 9-10 & n.17. Respondents, however, ask this Court to ignore both this practical reality and the express terms of section 306.

In their efforts to truncate section 306, respondents have sought to depict this carefully limited statute as a draconian intrusion upon the taxing authority of the states. Echoing the decisions below, respondents argue that the statute threatens to turn federal courts into "super-assessment boards" for all valuation disputes involving railroads.

That characterization is wholly unwarranted. Burlington Northern has never contended that section 306 gives federal courts jurisdiction over every dispute involving the valuation of railroad property.[3] What section 306 does prohibit is the *discriminatory* state taxation of railroads. If a railroad's property is taxed in proportion to that of other taxpayers within a state, the railroad must

[3] In fact, traditional valuation disputes involving the taxation of railroad property have continued to be litigated in state court. *See, e.g., In re Southern Ry.*, 313 N.C. 177, 328 S.E.2d 235 (N.C. 1985); *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196 (Tenn. 1984).

depend on the state's own remedies to resolve any overvaluation dispute that may arise.[4] Conversely, disproportionate state taxation of railroads is unlawful and subject to federal remedy, no matter how it is accomplished.[5] Thus, where a state's overvaluation of railroad property yields a discriminatory result, the federal courts may provide the carefully circumscribed but essential relief set forth in the statute.

Contrary to respondents' claim, no constitutional rule prohibits Congress from displacing state taxing authority to this extent, nor does any principle of comity or federalism require a particular threshold showing before a federal court may entertain a case of this nature. Respondents' arguments on these points are, at base, no more than policy disagreements with the statutory scheme Congress chose to enact. There is thus only one reasonable interpretation of section 306: that it directs federal courts to remedy state tax discrimination against railroads, whatever the root cause of that discrimination might be.

[4] For instance, if a state were to overvalue all property on a uniformly proportionate basis rather than increasing the nominal tax rate, § 306 would provide no remedy for overvaluation of a railroad's property.

[5] As this Court recently observed, the antidiscrimination policy of § 306 was designed to curb the "temptation [on the part of state and local governments] to excessively tax nonvoting, nonresident businesses in order to subsidize general welfare services for state residents." *Western Air Lines, Inc. v. Board of Equalization*, 55 U.S.L.W. 4202, 4204 (U.S. Feb. 24, 1987). Unlike the tax in *Western Air Lines*, the tax at issue here is not specifically allocated to the benefit of interstate carriers, but is used for general revenue purposes by Oklahoma counties. Moreover, § 306 contains no provision comparable to the "in-lieu" clause of the airline statute relied upon by the Court in that case.

ARGUMENT

I. SECTION 306 PLAINLY AUTHORIZES FEDERAL COURTS TO REMEDY STATE TAX DISCRIMINATION RESULTING FROM RAILROAD PROPERTY OVERVALUATION

Respondents brush past the text of section 306, according it little significance in their interpretations of the statute.[6] Indeed, respondents are unable to offer a convincing explanation of the statutory scheme that integrates their proposed overvaluation exception into the language and policy of the statute.[7] Contrary to respond-

[6] *See* note 2, *supra*. The Tax Commission even argues that the statutory text of § 306 should be ignored in favor of a later recodification. *See* Tax Commission Brief at 2. As numerous courts have held, however, the 1978 recodification of the Interstate Commerce Act made no substantive changes, and there have been no other revisions of § 306. *See* Petitioner's Brief at 2 n.2. In any event, while the Tax Commission argues that the language of the recodified § 11503 should be preferred to that of § 306, it makes no attempt to show how *either* version can be read to support its position.

[7] The State Board concedes that a claim of discriminatory overvaluation of railroad property may be brought in federal court, *if* the state's administrative and judicial remedies are shown to be less than plain, speedy, and efficient. State Board Brief at 20 & n.6. This is tantamount to admitting the error of the decisions below. Congress made an express finding that state remedies in this area are inadequate, and explicitly exempted § 306 from the operation of the Tax Injunction Act, 28 U.S.C. § 1341 (1982). § 306(2); *see infra* at 17-19 & nn.29-30. Since Congress has already made the precise determination upon which the State Board would have federal jurisdiction turn, the State Board's position dissolves into a mere policy disagreement with Congress.

For its own part, the Oklahoma Tax Commission effectively concedes that, as a substantive legal matter, § 306 prohibits state tax discrimination resulting from overvaluation of railroad property, arguing merely that such a case should be brought in state rather than federal court. Tax Commission Brief at 38-39. By its very terms, however, the jurisdictional grant of § 306 is coextensive with its substantive scope. *Compare* § 306(1) ("unlawful . . . to commit any of the following prohibited acts") *with* § 306(2) (federal court jurisdiction "to prevent, restrain, or terminate any acts in violation of this section"). Thus, if a § 306 case

ents' position, however, the plain language of section 306 clearly resolves the question before this Court.

Subsection 306(1)(a) requires that the ratios of "assessed" value to "true market" value must be equivalent (within five percent) for railroad property and for all other commercial and industrial property. § 306(1)(a), (2)(c). The only way for a court to determine whether that requirement has been met is to make factual findings concerning each of the four factors that go into the comparison. Two of the four factors—the assessed values—can in effect be lifted from state or local tax records, since they will rarely be in dispute. While one or both of the true market values may also be uncontested in certain cases, what respondents contend is that the true market value of railroad property can *never* be determined by the federal court, even if it constitutes the crux of the railroad's discrimination claim. Tax Commission Brief at 14; State Board Brief at 17-18. Respondents' interpretation of section 306 thus would reduce the statutory four-factor comparison to a single variable: the true market value of other commercial and industrial property.

It would be perverse indeed to read a law that specifically addresses *railroad* property taxation so as to make the value of *non-railroad* property the sole litigable issue. Having charged the federal courts with the duty to determine whether the ratio of assessed value to true market value is the same for railroad property as for other commercial and industrial property, Congress must have intended those courts to engage in whatever fact-finding is required to make that determination.

The results yielded by respondents' construction of the statute are even more anomalous. For example, in states that assess commercial and industrial property at its full true market value (*i.e.*, at a one-hundred-percent assessment ratio), railroad property could be assessed *at any value whatever* without triggering section 306, so long

involving overvaluation issues may be brought in state court, it may also be brought in federal court.

as the state declared the true market value of that property to be the same as the assessment.[8] Such anomalous consequences can be avoided only by giving the statute its plain meaning.

Respondents' narrow interpretation also fails because it makes the outcome of a section 306 case dependent upon state law and administration. If the state's own determination of "true market value" is given binding effect in federal court, then state law will control the meaning of that term. This Court has declared that federal statutes should not be interpreted to allow state law to control their essential terms, absent a clear statement to that effect. *See, e.g., Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 119 (1983). More important, "the general principle that, absent clear indication to the contrary, the meaning of words in a federal statute is a question of federal law has especial force when the purpose of the federal statute is to eliminate discriminatory state treatment of interstate commerce." *Western Air Lines*, 55 U.S.L.W. at 4204.

Section 306 contains no "clear indication" that state law or administration should control the determination of the "true market value" of railroad property. Indeed, the entire premise of the statute is that federal relief from state tax discrimination is necessary because of the inadequacy of existing state remedies. *See infra* at 18 & n.30. There is no warrant for assuming that Congress meant to commit a critical factual issue to state administrative processes, and consequently no basis for construing section 306 to make the true market value of railroad property solely a matter of state law.

The comprehensive structure of section 306(1) confirms that Congress intended to eliminate all forms of tax discrimination against railroads. In particular, subsection (1)(d)—the catchall provision that prohibits "any other tax which results in discriminatory treatment" of a railroad—evidences Congress' intent that no form of tax discrimination should escape the statute's reach. Given the historic prevalence of discrimination in *property* taxation, there would have been no reason to prohibit all *other* types of discriminatory taxes if Congress believed that subsection (1)(a) left open a potential property tax abuse. The catchall provision thus reaffirms that subsection (1)(a) encompasses discriminatory taxation resulting from railroad property overvaluation.[9]

The State Board argues that subsection (1)(d) encompasses only discriminatory taxes other than property taxes, and that discrimination through railroad property overvaluation—which it claims is not covered by subsection (1)(a)—therefore remains beyond federal review.[10] If discrimination resulting from overvaluation of railroad property could somehow be regarded as falling outside subsection (1)(a), however, it would necessarily be covered by subsection (1)(d)'s prohibition of "any other tax which results in discriminatory treatment." The State Board's argument that discrimination resulting from overvaluation falls outside the scope of *both* subsec-

[8] A number of states require assessment ratios of one hundred percent.

[9] This conclusion is also confirmed by the burden of proof clause in § 306(2)(d). The State Board argues that this clause contemplates proof of the market value of *non*-railroad property only. State Board Brief at 18. The clause on its face contains no such restriction, however. Where, as in § 306(2)(e), Congress meant to limit a provision to non-railroad property, it said so in unmistakable terms. The absence of such a restriction in § 306(2)(d) is therefore compelling proof that Congress meant it to apply to both railroad and non-railroad property. Finally, under the "applicable state law[s]" adopted as the burden of proof in § 306 cases, the value of a taxpayer's own property is certainly capable of proof. *See, e.g., Continental Oil Co. v. State Bd. of Equalization*, 494 P.2d 645, 648-49 (Okla. 1972).

[10] State Board Brief at 18-20. The Tax Commission argues a somewhat inconsistent position, contending that § 306(1)(d) applies only to taxes enacted after passage of the statute. Tax Commission Brief at 16. No support is offered for this novel view of the statute.

tions (1)(a) and (1)(d) simply does not square with the language or structure of the statute.

At bottom, it is unreasonable to contend that Congress authorized federal court review of all kinds of state tax discrimination against railroads save one. "The illogical results of applying such an interpretation . . . argue strongly against the conclusion that Congress intended these results." *Western Air Lines*, 55 U.S.L.W. at 4205. When the asserted exception is as obvious as overvaluing the railroad's property, the contention is even more implausible. Without any textual basis, respondents would create a loophole large enough to swallow the statute, and thereby vitiate Congress' goal of ending all forms of state tax discrimination against railroads.

II. THE LEGISLATIVE HISTORY OF SECTION 306 CONTAINS NO EVIDENCE THAT CONGRESS INTENDED STATE TAX DISCRIMINATION RESULTING FROM OVERVALUATION TO BE RESERVED FOR STATE REVIEW ALONE

On the premise that the language of section 306 does not resolve this case, respondents turn to selected excerpts from the statute's voluminous legislative history. Tax Commission Brief at 18; State Board Brief at 20-23. Given the clarity of the statutory text, this exercise is unnecessary, but in any event, the legislative history manifests no intent to deviate from the plain language of section 306. The Senate Committee observed that section 306 is "adequate to accomplish the intended purpose of eliminating discriminatory taxation." S. Rep. No. 1483, 90th Cong., 2d Sess. 8 (1968). These are plainly not the words of a deliberative body aiming to insulate an obvious mode of potential discrimination from review.

Respondents raise three distinct, and somewhat inconsistent, arguments concerning the legislative history of section 306. First, they assert that the overvaluation of railroad property was never brought to the attention of Congress as an element of state tax discrimination.[11]

[11] Tax Commission Brief at 32; State Board Brief at 23, 32.

Second, respondents argue that the railroads assured Congress that federal review of discrimination accomplished through overvaluation was not contemplated by section 306—in essence, that a "bargain" was struck on that point.[12] Third, respondents contend that in enacting the 4-R Act, Congress explicitly wrote relief from discriminatory overvaluation out of the statute in its final form.[13] None of these arguments has merit.

1. Congress was well aware that overvaluation of railroad property could lead to burdensome and discriminatory state taxes. The Doyle Report, the bedrock study for the 4-R Act, devoted considerable attention to disproportionate valuation as a source of excessive taxation of railroads. *See* Petitioner's Brief at 22-23 & n.33.[14] Indeed, valuation concerns were even addressed in the testimony of Mr. James Ogden cited by respondents.[15] On numerous occasions, state tax officials and others alerted congressional committees to the potential that valuation issues could arise in cases brought under section 306. *See* Petitioner's Brief at 23-25 & n.38; *infra* at 11-13. This multiplicity of references could hardly have escaped the attention of Congress as it considered the proposed legislation in detail for over fifteen years.

To be sure, before the 4-R Act, overvaluation was not the *primary* problem in the state taxation of railroads. So long as the states were permitted to apply facially higher tax rates and assessment ratios to railroad property than to other property, there was less reason to

[12] Tax Commission Brief at 29-30; State Board Brief at 30-32.

[13] Tax Commission Brief at 20-23, 32.

[14] Respondents concede that the Doyle Report "is the genesis of" § 306 and "the primer on ad valorem taxation." Tax Commission Brief at 25, 27.

[15] *Tax Assessments on Common Carrier Property: Hearings on H.R. 736, H.R. 10169 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 88th Cong., 2d Sess. 18-19 (1964) (valuation is neither incomprehensible nor overly complicated, and can be performed fairly as easily as it can be unfairly).

resort to the subtler tactic of inflating railroad property values.[16] Yet notwithstanding the predominance of cruder forms of discrimination before 1976, overvaluation of railroad property was certainly put before Congress as a potential source of state tax discrimination.

2. Contrary to respondents' claims, the railroads never assured Congress that section 306 would bar federal courts from inquiring into the true value of railroad property. In support of their "bargain" theory, respondents rely on a few scattered comments made by railroad representatives during the early legislative hearings. Those comments—all of which occurred before 1971—are merely isolated portions of an extensive deliberative record.

Viewed in proper context, the statements respondents cite reveal at most that section 306 was not intended to require a uniform *methodology* for railroad property valuation. *See infra* at 11 n.17. That is an unremarkable proposition; no one would dispute that the states remain free under section 306 to adopt whatever valuation methodologies they choose, so long as they do not discriminate against railroads. A considerable leap is required, however, to reach the conclusion that Congress intended to bar a federal court from correcting a particular valuation *result* yielding impermissible tax discrimination.

Respondents rely primarily on an assortment of oral remarks by Mr. Philip Lanier, one of a number of railroad witnesses, made during the 1969 and 1970 hearings. Respondents claim those remarks constituted a "promise" by the railroads that valuation issues would not be encompassed by the proposed legislation. Whatever Mr. Lanier's remarks may have conveyed, however—and they

---

[16] Respondents would have this case turn on "historical fortuity," a result this Court shunned in *Western Air Lines*, 55 U.S.L.W. at 4205.

are far from clear[17]—the same witness stated unequivocally in later written testimony that "the bill forbids states and localities to discriminate against interstate

---

[17] Mr. Lanier, counsel to the Louisville & Nashville Railroad, testified on behalf of the Association of American Railroads. Respondents quote part of a 1969 exchange with Senator Hansen, in which Mr. Lanier said: "The formula varies from State to State and we are not dealing with the valuation question. That is not our problem. We are speaking only of the equalization of the tax rate." *State Tax Discrimination Against Interstate Carrier Property: Hearings on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 91st Cong., 1st Sess. 39 (1969). Mr. Lanier's response was addressed to Senator Hansen's question concerning the valuation formula used in Wyoming. *Id.* Notably, Mr. Lanier supplemented his oral testimony with a letter, included in the report of the hearings, *opposing* a proposed amendment that would have committed determination of the true market value of railroad property to state agencies, the very result respondents seek here. Letter from Mr. Lanier to Senator Hartke (October 23, 1969), *reprinted in id.* at 107-08. *See* Petitioner's Brief at 24.

Mr. Lanier testified again a year later, and respondents quote him as follows:

> On the valuation—this bill would not deal with valuation being standard. The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation . . . . [I]t is only in the area of equalization of the computed value that this legislation speaks. That is where our problem is.

Common and Contract Carrier State Property Tax Discrimination: Hearings on H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411, H.R. 16639, and S. 2289 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 138 (1970). Respondents also quote Mr. Lanier's statement: "Because we are speaking in terms of uniformity of the equalization ratio, . . . once the fair market value is determined . . . ." *Id.* at 139. These comments came in the midst of an extended colloquy between the witness and Representative Adams, in which the latter had inquired whether the bill would mandate that a railroad right-of-way be valued at no greater than the value of an adjacent "vacant property plus the value of the rails." *Id.* at 139. Mr. Lanier was simply explaining that the proposed legislation would neither require that particular result, nor require the use of any particular valuation method.

carriers in *fixing the levels of value* at which the transportation property . . . is fixed for purposes of taxation." [18] Thus, as of 1971, Mr. Lanier was plainly on record before Congress with the view that the proposed legislation *did* encompass discriminatory overvaluation of rail property.

Indeed, the legislative history contains numerous references to the valuation issue after 1970—the date by which respondents contend their alleged legislative "bargain" was struck. The record reflects an understanding that the bills would permit federal judicial fact-finding with respect to overvaluation of rail property. For example, Mr. Charles Conlon of the National Association of Tax Administrators repeatedly advised congressional committees that, in a case brought under section 306, "any point bearing on the validity of that tax, not only the percentage of assessment . . . is going to come before the court." [19] Mr. Conlon also explained that the "matter of assessment levels cannot be considered apart from the basic *valuations* put on properties of all kinds including *railroad property*." *House Hearings of 1972* at 1239 (prepared statement) (emphasis added). Indeed, elaborating upon the broad scope of the proposed legislation, Mr. Conlon offered an example:

> The property of the complaining carrier might be equalized at what *appeared* to be the same assessment ratio that is applied to other property but *in the valuation process the property was overvalued so that when the assessment ratio was applied against the overvaluation the result would be an overvalued segment of property.*
>
> Now in order to deal with that kind of case *the court definitely would have to be involved in the original assessment* of the property.

Senate Hearings of 1971-72 at 209 (emphasis added). That hypothetical is now before this Court.[20]

Legislators well understood the potential for overvaluation to contribute to state tax discrimination. Senator Pearson expressed "surprise[ ] . . . that my State was up near the top among those which had discriminated in the *different valuations*, tax rates, et cetera." *Senate Hearings of 1971-72* at 294 (emphasis added). Representative Adams, a sponsor of the bill, stated that "[w]e establish a uniform situation for the transportation system as opposed to a checkerboard situation of taxes for varying state procedures and various court procedures for *valuation* of an interstate facility." *House Hearings of 1972* at 1245 (emphasis added).[21]

In short, the legislative history refutes the theory of a "deal" eliminating overvaluation from the statute's coverage. Coupled with the fact that all of the quotations relied upon by respondents are taken from the early stages of the legislative process—well before the addition of the broad catchall prohibition of "any other

---

[18] *Surface Transportation Legislation: Hearings on S. 2362, S. 1092, S. 1914, S. 2635, S. 2841, S. 2842 and S. Con. Res. 56 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 92d Cong., 1st Sess. 297 (1971-72) ("*Senate Hearings of 1971-72*") (prepared statement) (emphasis added).

[19] *Transportation Act of 1972: Hearings on H.R. 11824 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 92d Cong., 2d Sess., pt. 4, 1244-45 (1972) ("*House Hearings of 1972*"); *see id.* at 1237; *Senate Hearings of 1971-72* at 208.

[20] Certain amici argue that, after 1970, no federal agency suggested § 306 would provide relief for railroad property overvaluation. *See* Brief Amici Curiae of Fifty California Counties at 22. But in 1972, when the Interstate Commerce Commission was asked to comment on the compatibility of a Tennessee constitutional initiative with the draft legislation, it declined to offer a definitive response, citing the failure of the initiative to ensure uniform ascertainment of values for rail and other property. *Senate Hearings of 1971-72* at 338. Thus, the ICC continued to view unequal valuation as a potential source of tax discrimination against railroads.

[21] Mr. Adams also observed that assessment of value and application of a tax rate are effectively interchangeable as methods of potential discrimination. *House Hearings of 1972* at 1305.

tax which results in discriminatory treatment"—it is apparent that there is no basis in the legislative history for narrowing the plain meaning of the statute.

3. Respondents are also unpersuasive in contending that, by adopting the Senate rather than the House version of the bill that became section 306 of the 4-R Act, the Conference Committee implicitly rejected the House's view of subsection (1)(a) as prohibiting "overvaluation." The texts of the two bills, including those portions that would become subsection (1)(a), were substantially identical.[22] The *descriptions* of the bills in the Conference Report differed, but only to the extent that the description of the House version *expressly* mentioned overvaluation as a prohibited practice, while the description of the Senate version—which simply traces the statutory language—did not mention any prohibited practices specifically. S. Conf. Rep. No. 595, 94th Cong., 2d Sess. 165-66 (1976). The Conference Report nowhere suggests that the plain language of either bill was to be implicitly restricted in any way. *Id.*

III. NEITHER THE CONSTITUTION NOR ANY PRINCIPLE OF FEDERALISM SUGGESTS THAT SECTION 306 SHOULD BE READ IN AN UNNATURALLY RESTRICTIVE MANNER

This is a straightforward case of statutory interpretation. The question before this Court is not what Congress should have done, but what it did. Yet in an attempt to restrict the statute's scope, respondents raise a bevy of policy arguments concerning the proper balance of federal and state interests. State Board Brief at 14; Tax Commission Brief at 33-36. These arguments do little more than recycle the political issues Congress disposed of when it enacted section 306. As this Court has recognized on many occasions, if a statute speaks clearly as a valid exercise of federal authority, no further inquiry into its impact on state and local prerogatives is necessary.[23]

[22] The respective versions of subsection (1)(a) are reproduced in the Appendix to this Brief.

Among the most clearly established federal powers is that to regulate interstate commerce and, in particular, to prevent state discrimination against interstate commerce. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). The force of the Commerce Clause is greatest where, as here, Congress has acted directly to eliminate state tax discrimination. So long as there is a rational basis upon which Congress could find state interference with interstate commerce, and so long as reasonable means are employed to eliminate that interference, the statute is unquestionably valid. *Arizona Public Service Co. v. Snead*, 441 U.S. 141, 150 (1979); *see Aloha Airlines, Inc. v. Director of Taxation*, 464 U.S. 7 (1983). Under any interpretation of its scope, section 306 satisfies this standard.[24]

When respondents raise the spectre of federal courts meddling in the states' fiscal affairs, they ignore the federal interests impelling the limited intrusion worked by section 306. Any "interference" with state taxing authority is necessarily attendant to accomplishing the important federal objective of sheltering interstate commerce from excessive financial burdens. Section 306 was

[23] *See, e.g., United States v. Turkette*, 452 U.S. 576, 586-87 (1981) (RICO statute plainly created "new domain of federal involvement" due in part to inadequacy of existing state law); *Scarborough v. United States*, 431 U.S. 563, 577 (1977) (no inquiry into federal-state balance where statute is unambiguous).

[24] Reference to the constitutional authority underpinning § 306 would be unnecessary but for the eleventh-hour contention that, if read to encompass claims of railroad property overvaluation resulting in discrimination, the statute would be unconstitutional. Brief for the States of Kansas, *et al.*, as Amici Curiae, at 13-18; *see* State Board Brief at 47. No constitutional challenge to § 306 was raised below, however, and no constitutional issue is before this Court.

narrowly tailored to ensure it had no *unwarranted* impact on state judicial or fiscal administration.[25]

In any event, respondents' "interference" complaint proves too much. There is no greater intrusion on a state's taxing power when a federal court partially invalidates a state tax because of discriminatory overvaluation of railroad property than when it does so based on discriminatory undervaluation of non-railroad commercial and industrial property. But respondents concede, as they must, that the latter relief is authorized by section 306.[26] Thus, there can be no doubt that, even when the statute is accorded its plain meaning, the impact of section 306 on state tax systems is well within the powers granted to Congress under the Commerce Clause.[27]

---

[25] For a review of the numerous restraints on the exercise of federal jurisdiction built into § 306, see Petitioner's Brief at 6-7 and the Brief of the United States as Amicus Curiae at 3-4, 20-21, 23-25.

[26] Respondents misread both the statute and this Court's decision in *Moses Lake Homes, Inc. v. Grant County*, 365 U.S. 744 (1961), in arguing that *Moses Lake Homes* precludes construing § 306 to set up a federal court as a tax "assessor." State Board Brief at 47; Tax Commission Brief at 38. In contrast to § 306, *Moses Lake Homes* involved an all-or-nothing situation: if the state tax was invalid because of discrimination against the federal interest, it was completely invalid. On that basis, this Court found it improper for the federal court to reinstitute the "valid portion" of the state tax. *Id.* at 751-52. *Moses Lake Homes* thus is inapposite to this case; moreover, if that decision *did* apply, it would dictate that any state tax that discriminates against railroad property by means of overvaluation would be *invalid in its entirety.*

[27] Remarkably, the State Board contends that, even if § 306 encompasses state tax discrimination through overvaluation of railroad property, a supposed "federal common law" of "discriminatory overvaluation of property" requires a showing that the discrimination is "fraudulent or intentional" before a remedy may be supplied. *See* State Board Brief at 34-36 & n.12. In support of this proposition, the State Board cites a series of vintage cases decided by this Court. *Id.*

The argument drastically misses the mark; under its modern Commerce Clause analysis, this Court has adopted *objective* standards of review, focusing on the economic incidence of a challenged

Respondents' remaining arguments amount to nothing more than a diffuse objection that Congress could not truly have intended to restrict the states in the manner it did. This complaint blinks the reality not only of section 306, but of the 4-R Act as a whole. In the midst of an unprecedented national rail crisis, Congress perceived the need for a major overhaul of governing policy toward the railroad industry. This entailed not only stripping away layers of federal regulation, but also restricting the states in areas where they had previously been permitted greater leeway—as in the regulation of intrastate rail rates. Pub. L. No. 94-210, § 210, 90 Stat. 31, 46 (1976).[28] Viewed in this context, it is not surprising that Congress was willing in 1976 to adopt measures to end the discriminatory state taxation of rail carriers that it had previously considered unnecessary.[29]

---

tax, rather than the state's intent. *See, e.g., Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 331 (1977); *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 69 (1962) (citations omitted); *Railway Express Agency, Inc. v. Virginia*, 347 U.S. 360, 363 (1954) (citations omitted). Accordingly, no demonstration of discriminatory intent is necessary to establish a violation of the Commerce Clause, *see, e.g., Norfolk & Western Ry. v. Missouri State Tax Comm'n*, 390 U.S. 317, 329 (1968) (state property tax held invalid without inquiry into discriminatory intent), nor is there any "federal common law" dictating a contrary result.

Respondents' argument would be misguided even if it were premised on an accurate view of the law prior to passage of the 4-R Act. As a statute, § 306 displaces prior law under the dormant Commerce Clause, supplying specific statutory standards—none of which even mentions intent—for adjudication of cases alleging discriminatory state taxation of railroads. To the extent any doubt could be said to exist in this respect, the statute is entitled to a presumption that it goes *further* than preexisting law in the prevention of tax discrimination. *See Arizona Public Serv. Co. v. Snead*, 441 U.S. at 151-52 (Rehnquist, J., concurring).

[28] Four years later, even more stringent restrictions upon state authority over interstate railroads were imposed by the Staggers Rail Act of 1980, Pub. L. 96-448, § 214(a)-(c)(1), 94 Stat. 1895, 1913-15.

[29] Surprisingly, respondents continue to argue that, as to matters of railroad property valuation, the scope of § 306 is circumscribed

Respondents would commit tax discrimination disputes arising out of overvaluation of railroad property to state review alone. In concluding that federal court jurisdiction was needed, however, Congress explicitly determined that state administrative and judicial remedies in this field were inadequate.[30] Congress sought to establish a

---

by the Tax Injunction Act, 28 U.S.C. § 1341 (1982). Tax Commission Brief at 33-35; State Board Brief at 15. Subsection (2) of § 306 contains a plain statement to the contrary, making federal relief available "[n]otwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws of any State." A clearer exception to the Tax Injunction Act would be difficult to imagine.

[30] *See* H.R. Rep. No. 725, 94th Cong., 1st Sess. 76-77 (1975); S. Rep. No. 1085, 92d Cong., 2d Sess. 4-5 (1972) (In practice, 28 U.S.C. § 1341 closes federal courts to carriers burdened by discriminatory taxation, "without . . . ensuring them a plain, speedy, and efficient State remedy."); S. Rep. No. 630, 91st Cong., 1st Sess. 6-7 (1969) (State administrative procedures to challenge taxes are "often difficult, time consuming, and not productive of material relief"; relief in the state courts is slow; and "State courts are very reluctant to overturn the action of the assessing body, and they exert every effort to sustain the tax administrators."); S. Rep. No. 1483, 90th Cong., 2d Sess. 6 (1968) (same).

The legislative record thus directly refutes respondents' assertions as to the adequacy of state remedies. *See* Tax Commission Brief at 25; State Board Brief at 10, 20 & n.6. Indeed, even after passage of § 306, state remedies in valuation disputes continue to present long delays and permit no independent judicial inquiry into the facts underlying state administrative determinations. *See, e.g., Trailer Train v. State Bd. of Equalization*, 180 Cal. App. 3d 565, 225 Cal. Rptr. 717, 726 (Cal. Ct. App. 1986) (review limited to administrative record); *Southern Ry. v. Board of Equalization*, 682 S.W.2d 196, 199 (Tenn. 1984) (board's appraisal stands unless unsupported by substantial evidence on the record); *In re Assessment of Omaha, Lincoln & Beatrice Ry.*, 213 Neb. 71, 327 N.W.2d 108, 111 (Neb. 1982) (presumption in favor of administrative valuation); *Richmond, F. & P. R.R. v. State Corp. Comm'n*, 219 Va. 301, 247 S.E.2d 408, 415 (Va. 1978) (deference to board in valuation matters). *See also* Okla. Stat. Ann. tit. 68, § 2467 (West Supp. 1987) (amount of tax "protested and paid under protest shall be limited to the full amount of tax for the prior year"); Okla. Stat. Ann. tit. 68, § 2468 (West 1966) (upon judicial review, presumption in favor of State Board).

federal forum for fair and expeditious resolution of *all issues* relating to alleged tax discrimination by a state or its localities against railroads.[31] Section 306 represents a clear determination, based on the historical inability of railroads to obtain effective relief at the state level, that an unusual degree of federal involvement is required to protect interstate commerce. Given that legislative decision, arguments based upon federalism or judicial doctrines of comity are irrelevant to interpretation of the statute before this Court.

In sum, Congress has made a judgment that state tax discrimination against railroads is a national problem, calling for a national solution. On its face, the statute Congress enacted authorizes federal courts to remedy *all* state taxes that impose a disproportionate burden on railroads, and there is nothing to indicate that the statute does not mean precisely what it says. If section 306 is to have its intended effect, it must be read as authorizing federal courts to remedy all state tax discrimination against railroads, regardless of how that discrimination is accomplished.

---

[31] *See* H.R. Rep. No. 725, 94th Cong., 1st Sess. 77 (1975) ("Relief from discrimination in the Federal courts is essential because railroads are located in numerous taxing jurisdictions and under state law may be required to bring numerous suits in various jurisdiction[s] to obtain relief."); S. Rep. No. 445, 87th Cong., 1st Sess. 466 (1961) (object is to "provide a forum other than at the State level to decide such unlawful assessment and collection of taxes"); *see also Tax Assessments on Common Carrier Property: Hearings on H.R. 4972 Before the House Comm. on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. 5-6 (1966) (letter fron. Advisory Commission on Intergovernmental Relations' spokesman William Colman, March 4, 1966) (Bill gives "Federal courts jurisdiction over litigation pertaining to such assessments" and "channel[s] technical tax issues to Federal courts of general jurisdiction"; there has been an unacceptable "spread of inconsistent valuation practices between States, among taxing districts within States, and among properties within taxing districts.").

CONCLUSION

For the reasons stated in the Brief for Petitioner and in this Reply, this Court should reverse the order and judgment of the Court of Appeals, and the case should be remanded to the District Court.

Respectfully submitted,

Of Counsel:
EDMUND W. BURKE
JEFFREY D. LERNER
BURLINGTON NORTHERN
RAILROAD COMPANY
777 Main Street
Fort Worth, Texas 76102

BETTY JO CHRISTIAN
(Counsel of Record)
TIMOTHY M. WALSH
STEVEN REED
JERALD S. HOWE, JR.
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-8113
Attorneys for Petitioner

March 9, 1987

APPENDIX

The text of section 306(1)(a), both as originally passed by the Senate and as finally enacted into law, read as follows:

> The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

S. 2718, 94th Cong., 1st Sess. § 207 (passed by the Senate December 2, 1975).

The corresponding text in the House bill, as passed and forwarded to the Conference Committee, was as follows:

> The assessment (but only to the extent of any portion based on excessive values as hereinafter described in paragraph (3)), for purposes of a property tax levied by any taxing district, of transportation property owned or used by a carrier by railroad subject to this part at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other commercial and industrial property (located in the assessment jurisdiction of any State in which is included such taxing district and subject to a property tax levy) bears to the true market value of all such other commercial and industrial property.

H.R. 10979, 94th Cong., 1st Sess. § 601 (1975) (passed by the House December 17, 1975).